

FILED

APR 15 1916

JAMES D. MAHER
CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1915.

THE UNITED STATES,
Plaintiff-in-Error,

vs.

HERMAN H. OPPENHEIMER,
et al.

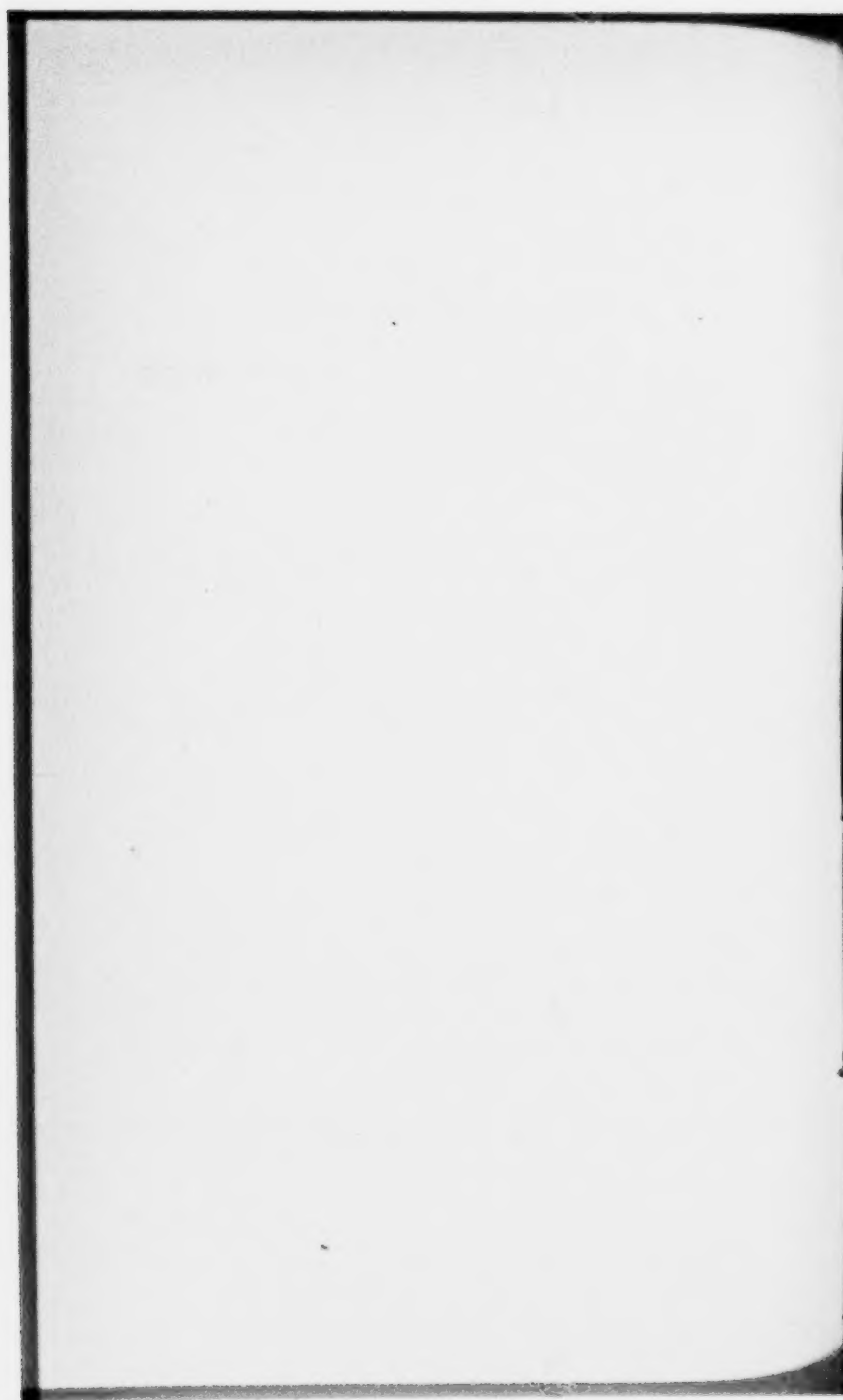
No.



412

IN ERROR TO THE DISTRICT COURT OF
THE UNITED STATES FOR THE SOUTH-
ERN DISTRICT OF NEW YORK.

MEMORANDUM IN OPPOSITION TO MOTION
TO ADVANCE.



IN THE
Supreme Court of the United States

OCTOBER TERM, 1915.

THE UNITED STATES, Plaintiff-in-Error, vs. HERMAN H. OPPENHEIMER et al.	} No. 899.
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**MEMORANDUM IN OPPOSITION TO MOTION
TO ADVANCE.**

This is a motion to advance the above entitled cause for hearing during the next term of this court.

With the submission of this motion there will also be submitted a motion on behalf of defendant, Oppenheimer, to dismiss the appeal herein, on the ground, among others—that this Court has no jurisdiction of an appeal from an order quashing an indictment when no construction or interpretation of a statute was involved.

Criminal Appeals Act, 34 Stat., 1246.

(See numerous cases cited on brief to dismiss appeal submitted herewith.)

The present motion to advance admits the contention of the defendant-in-error on the motion to dismiss the appeal is justified to wit: that no statute was interpreted in the decision of the motion to quash, and if this is so then the motion to advance ought be denied and the appeal dismissed. The last five lines of this motion to advance reads:

"The District Court entered judgment quashing the subsequent indictment on the ground that the judgment on the first indictment was determinative of the case and protected the defendant in error from further prosecution for the same crime,"

which is an admission that no statute was construed in the order appealed from and the same paper admits that the order was made on a motion to quash. In other words the Court merely held that the law of the case having been settled as between the Government and this defendant by the decision on the former indictment, and that order having remained in full force and effect and never having been appealed from, the defendants could not while such order was in full force and effect be re-indicted for the same crime; irrespective of whether the former opinion was right or wrong the law of the case as between the Government and this defendant was settled by the final order in a Court of competent jurisdiction on the same matter between the same parties.

The opinion of the Court below (See ^{additional} record, ^{opinion} *Repe*)), SHOWS CLEARLY THAT THE JUDGE DID NOT INTERPRET ANY STATUTE AND DID NOT HOLD THAT THE STATUTE OF LIMITATIONS BARRED THE PROSECUTION.

The opinion shows just the opposite to wit; the court says if it were to construe the Statute it would have decided against the defendant, but that it would not and did not interpret or construe the statute.

The statement on page 2 of the motion to advance is misleading as the proper sequence should show that the defendant in error (Oppenheimer) was again indicted on December 21, 1914, the motion to quash heard January 30, 1915, and the opinion in United States vs. Rabinowich delivered June, 1915.

The statement as to the grounds of the motion to quash is also misleading. There were many grounds but the opinion of the Court and judgment was entered only on one ground that the law had been established as between the Government and the defendant, Oppenheimer, and the judgment establishing same had never been appealed from or reversed and remained the law of the case.

For the reasons herein stated and the brief on the motion of the defendant, Oppenheimer, to dismiss the appeal, and the admission in the motion of the United States to advance the cause, the appeal should be dismissed and the motion to advance should be denied.

Dated, April, 1916.

Respectfully submitted,

L. Laflin Kellogg
Abraham J. Rose
 Counsel for Deft. in Error